

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 22-10964-mg

4 Adv. Case No. 24-04018-mg

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6 In the Matter of:

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8 CELSIUS NETWORK LLC,

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10 Debtor.

11 - - - - - x

12 CELSIUS NETWORK LIMITED, ET AL.,

13 Plaintiffs,

14 v.

15 TETHER LIMITED, ET AL.,

16 Defendants.

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1 United States Bankruptcy Court  
2 One Bowling Green  
3 New York, NY 10004  
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5 September 24, 2024  
6 3:55 PM  
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21 B E F O R E :

22 HON. MARTIN GLENN

23 U.S. BANKRUPTCY JUDGE

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25 ECRO: KAREN

1 HEARING re Case Management Conference Held Using Zoom for  
2 Government. (Doc ## 6 to 9)

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25 Transcribed by: Sonya Ledanski Hyde

1 A P P E A R A N C E S :

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1 P R O C E E D I N G S

2 CLERK: Good afternoon. Starting the four o'clock  
3 hearing, recording, on September 24, 2024, calling Celsius  
4 Network et al. v. Tether Limited et al., Case Number 24-  
5 4018. If we could have the parties give their appearances.

6 MR. FINESTONE: Hi. Good afternoon. It's Ben  
7 Finestone from Quinn Emanuel on behalf of the Plaintiffs.

8 CLERK: Thank you.

9 MR. FINESTONE: Thank you.

10 CLERK: Do we have any additional parties making  
11 appearance at this time? I don't see anyone. All right,  
12 you can pause for -- for the parties that have joined, if  
13 anyone is speaking on the record this afternoon, please  
14 unmute your line and state your appearance.

15 MR. LAVINBUK: Good afternoon. Ariel Lavinbuk,  
16 from Kramer Levin, for the Defendants.

17 CLERK: Okay, thank you. Are the parties ready to  
18 begin or --

19 MR. LAVINBUK: Ariel Lavinbuk, from Kramer Levin,  
20 for the Defendants.

21 MR. FINESTONE: That was a good trick, Ariel. The  
22 Plaintiffs are ready, Ms. Anderson.

23 CLERK: I'm sorry?

24 MR. FINESTONE: The Plaintiffs are ready to answer  
25 your question.

1 CLERK: Okay, thank you. Judge, do you want to  
2 wait or do you want to --

3 THE COURT: No, we can go ahead.

4 CLERK: Okay.

5 THE COURT: Good afternoon. So, Mr. Finestone,  
6 tell me about this case.

7 MR. FINESTONE: But for the record, Your Honor,  
8 just to be safe, Ben Finestone, Quinn Emanuel, on behalf of  
9 the Plaintiffs. I'm receiving your question, I'm  
10 interpreting your question more substantively than  
11 procedurally, Your Honor, or am I interpreting it wrong?

12 THE COURT: Well, I'm going to ask Mr. Lavinbuk --  
13 I know, I read the letters. Obviously, I disagreed with the  
14 Defendants' position with respect to working out a  
15 scheduling order. I -- let me just deal with that first.  
16 I've read, obviously, I have the Joint Rule 26F report, and  
17 I have the proposed case management and scheduling order;  
18 both are going to be approved.

19 I appreciate that you did that what I really  
20 require to be done. So, I know from the Defendants' letter  
21 that they intend to make a motion to dismiss. Why don't you  
22 briefly discuss the personal -- obviously, I'm going to have  
23 a motion and it'll be fully briefed and I'll deal with it  
24 then. But just briefly, describe for me why you believe  
25 there's personal jurisdiction over the Defendants?

1 MR. FINESTONE: Yes, Your Honor, thank you. And  
2 not to dodge the question, because I'm obviously going to  
3 answer the question, but in case Your Honor was curious,  
4 just about the amount -- thank you for the Court's  
5 indication that it will enter those orders. If Your Honor  
6 was curious about the amount of time that the Defendant,  
7 that the parties agree that the Defendant would have to file  
8 that motion to dismiss, that's related to Your Honor's  
9 question, that's because they accepted service under Federal  
10 Rule of Civil Procedure 4, give them 60 days. And then,  
11 they had given us 30 days, Your Honor, of a totaling  
12 agreement, beyond the deadline in 546(a), and in exchange we  
13 had agreed in advance to give them 30 extra days; not that  
14 we could give them, but that we would be agreeable to giving  
15 them 30. So, that's -- I just wanted Your Honor to have  
16 that (indiscernible).

17 THE COURT: And I'm fine with that. I mean, the  
18 schedule that you both agreed on is satisfactory to the  
19 Court.

20 MR. FINESTONE: Thank you, Your Honor. To return  
21 to the question that I said I wasn't dodging, Your Honor, we  
22 believe there's personal jurisdiction for, I guess several  
23 factual reasons. One, there is a contract that underlies  
24 these, the transfers that were made in the 90-day period  
25 prior to the bankruptcy. And that contract, at least Your

1 Honor, from the, from the Debtor's perspective, the humans  
2 that were negotiating that contract with Tether, were in,  
3 were in the United States of America, they were in northern  
4 New Jersey. Tether knew that, and so Tether availed itself  
5 of New York -- Tether engaged with New York -- it's New  
6 Jersey, Your Honor. Tether engaged itself with New Jersey  
7 individuals and negotiating and ultimately entering into  
8 this lending relationship with the Debtors. The contract  
9 was signed by Debtor representatives in New Jersey.

10 More specifically, Your Honor, because it's not  
11 just the documenting of the contract, but then as a debtor-  
12 in-possession, we're a reorganized debtor. But as an entity  
13 in bankruptcy, we're focused on the transfers that were made  
14 pursuant to the contract. And those transfers were each  
15 authorized by an individual that was sitting in New Jersey.  
16 And so, from our perspective, the incurrence of the debt was  
17 done pursuant to a contract that was negotiated in, very  
18 close to Your Honor's court. And then the transfers that  
19 we're seeking to avoid, Your Honor, were also authorized  
20 from the northern east quadrant of the United States of  
21 America.

22 In terms of, this is, of course, this is, of  
23 course cryptocurrency, so it's not as easy to say the cash  
24 that was transferred out was in a bank account in New York.  
25 But we think that cuts in the Plaintiff's favor because



1 there's really nowhere to say where the bitcoin was that was  
2 transferred. It was on every, it was on every exchange  
3 around the globe, including in exchanges that were in the  
4 United States. And so, both from a personal jurisdiction  
5 standpoint, Your Honor, as well as from a -- is, are these  
6 transfers, should they be considered to be extraterritorial?  
7 Assuming, arguendo, that the Court were to determine that  
8 they cannot be extraterritorial to be subject to chapter 5  
9 avoidance. We believe that the transfers are also domestic,  
10 Your Honor.

11 THE COURT: Is there a choice of law provision in  
12 the contract?

13 MR. FINESTONE: It's not exclusive, Your Honor.  
14 The choice of law is foreign law, and that will govern. And  
15 we were forthright about this in the complaint. We believe  
16 that will govern the breach of contract claim, but it,  
17 unsurprisingly, we do not believe that BVI law governs,  
18 whether or not there was a preferential transfer under 11  
19 USC 547 or 548, Your Honor. And it's not exclusive  
20 jurisdiction, the contract.

21 THE COURT: Mr. Lavinbuk, you want to address the  
22 personal jurisdiction issue briefly?

23 MR. LAVINBUK: I appreciate it, Your Honor, yes.  
24 So, the complaint names four defendants -- sorry --

25 THE COURT: You froze, but go ahead. Why don't

1 you start again. I heard you say there are four defendants.

2 Yes.

3 MR. LAVINBUK: Thank you, Your Honor. So, the  
4 complaint names four defendants. There are zero allegations  
5 about three of them. There are no jurisdictional  
6 allegations, there are no substantive allegations; there's  
7 nothing about them. As to the fourth, the fourth is a  
8 Tether entity that is based in Hong Kong. It was the  
9 contractual counterparty to something called the Token  
10 Agreement; it's the contract that is at issue in this case.

11 THE COURT: When you say the fourth, Tether  
12 Operations Limited?

13 MR. LAVINBUK: No, no, I'm sorry. It's Tether  
14 Limited, is the only defendant for whom there are any  
15 allegations in the complaint. As to the other three, there  
16 are none -- no jurisdictional, no substantive, nothing. As  
17 to Tether Limited, it is, as the complaint alleges, a  
18 foreign entity. It's counterparty, the Plaintiff, Celsius  
19 UK, also a foreign entity, this is Celsius -- sorry, I don't  
20 have the name in front of me, but the complaint alleges it  
21 to be a UK entity. And the contract is governed by BVI law.  
22 That's the choice of law.

23 Now, Mr. Finestone is right that there is not an  
24 exclusive submission to jurisdiction, but the contract  
25 itself is nevertheless governed by US law. So, we have two

1        counterparties, and the transfers are alleged to have  
2        occurred pursuant to that contract. Both counterparties are  
3        foreign, they chose a foreign basis of law. Mr. Finestone  
4        noted, as the complaint does, that certain of the employees  
5        for, I guess the Celsius UK entity, may have, at times, been  
6        in the United States. Our motion will show that under  
7        Second Circuit and other cases in the Southern District, the  
8        fact that the Plaintiff has employees in the United States,  
9        does not mean that the Defendant has purposely availed  
10       themselves of US law, when the place of performance is not  
11       in the United States, when the Defendants did not go to the  
12       United States to do any of those things; those are  
13       considered incidental contacts under the law. And those are  
14       the only things that are cited in the complaint.

15                And so, again, we will put this fully in the  
16       briefing, but we think there's a strong argument that there  
17       is no personal jurisdiction over the one entity for whom  
18       there are any allegations, because we are not directed -- my  
19       client has not done anything in the United States.

20                As to the cryptocurrency that's at issue, I agree  
21       with Mr. Finestone that the fact that it's crypto, in a  
22       sense, makes it easy, because there is no bank account.  
23       There's no bank account in the United States. There's no  
24       cash in the United States that left the United States to go  
25       to my client. This is merely crypto. We will show, under

1 the law, that the predominance of courts consider that  
2 crypto exists where its owner exists, which is to say either  
3 here or in the UK where the Celsius entity is, or in Hong  
4 Kong, where the Tether entity is, but in all events, not in  
5 the United States.

6 And so, here we think the complaint simply doesn't  
7 allege anything that shows that our client purposely availed  
8 itself of being in the United States.

9 THE COURT: So, let me ask -- let me switch back  
10 to Mr. Finestone. The law in this circuit, with respect to  
11 motions to dismiss, or lack of personal jurisdiction, really  
12 sets up alternative tests. And do you intend to take  
13 jurisdiction about personal -- do you intend to take  
14 discovery about personal jurisdiction?

15 MR. FINESTONE: Your Honor, we plan on serving  
16 discovery without delay. We do, given that Mr. Lavinbuk's  
17 client has been clear that it believes that there's an  
18 absence of personal jurisdiction, we will include discovery  
19 of the personal jurisdiction, just as a -- the way a lawyer  
20 would say, Your Honor, we do believe -- I do disagree, and I  
21 do believe that the allegations in the complaint are  
22 sufficient to withstand the 12(b)(6) -- 12 -- a jurisdiction  
23 pleadings motion. But I think, especially given out of  
24 respect for the efficient way that Your Honor controls --  
25 it's not the Court's docket, we will include that in the

1 discovery that we served, and will try to do this  
2 efficiently and get -- bolster our allegations. But I am  
3 confident, Your Honor, we are not just simply saying that we  
4 have employees that were in the United States. We're saying  
5 that the employees that we had in the United States are the  
6 employees that Tether negotiated this arrangement with, and  
7 they are the employees that directed the transfers that  
8 we're seeking avoidance of your -- so it's much more  
9 specific --

10 THE COURT: When was the transaction negotiated?

11 MR. FINESTONE: The governing contract, as  
12 amended, Your Honor, was last amended and is effective  
13 January 20, 2022. The transfers that we're seeking  
14 avoidance of are, obviously, in the 90-day period, prior to  
15 the bankruptcy case.

16 THE COURT: Did Celsius have employees in the UK  
17 then?

18 MR. FINESTONE: The CEO spent most of his time in  
19 New Jersey, Your Honor. I don't know to what extent there  
20 were employees in the United Kingdom. And in part, I don't  
21 know it because I've been focusing on the employees that  
22 we're going to need to, that we had to consider in  
23 negotiating the case management or whatever, and the  
24 employees that are relevant to our case, Your Honor.

25 THE COURT: Let me ask, Mr. Lavinbuk, from your

1 letter, I read not only do you plan to move to dismiss for  
2 lack of personal jurisdiction, but also 12(b)(6), is that  
3 correct?

4 MR. LAVINBUK: Correct, Your Honor.

5 THE COURT: And just very briefly, what are your  
6 arguments under 12(b)(6)? I understand -- we'll see what  
7 the specifics are on personal jurisdiction, but what are  
8 your arguments with respect to 12(b)(6)?

9 MR. LAVINBUK: Sure. There's a couple. The first  
10 one is, we're going to make an extraterritoriality argument,  
11 which is technically a 12(b)(6) argument. We believe the  
12 facts necessary to sustain that argument are clear from the  
13 allegations in the complaint. That's number one. We're  
14 going to allege a failure to state a contract claim. They  
15 have a theory that we breached the contract by virtue of us  
16 taking Celsius' instruction to liquidate the collateral.  
17 We're going to show that that both doesn't violate the  
18 contract, as well as the fact that we had other grounds to  
19 liquidate even without Celsius' consent. We're going to  
20 make an argument that there is a failure to allege the prima  
21 facie elements of a preference because at all relevant  
22 times, Tether was over secured and, therefore, it wasn't  
23 made better off by the provision of the collateral that was  
24 provided. So, those are the big ones.

25 THE COURT: Okay.

1 MR. LAVINBUK: It may well be that we also make  
2 arguments that certain affirmative defenses under 547(c) are  
3 just plain from the face of the complaint.

4 THE COURT: All right. Have you, the two of you  
5 agreed on a briefing schedule, on the motion to dismiss?

6 MR. LAVINBUK: We have, Your Honor. And it was --  
7 I'm sorry, it might have been lost in the mix. We actually  
8 proposed a briefing schedule with the letters last week. I  
9 believe it's Docket Entry 6 or 7. And yes, as Mr. Finestone  
10 noted, we actually had extensive conversations about a  
11 schedule that honors the waiver that we gave, and the  
12 totaling agreement that we gave while also accommodating for  
13 end-of-year schedules and things of that nature.

14 THE COURT: Just give me -- I apologize, I don't  
15 have the letters in front of me -- just lay out for me the  
16 schedule that you agreed upon.

17 THE COURT: Sure. So, we agreed to file our  
18 motion to dismiss on or before November 14. And just to  
19 give you some color, part of that is that myself and many  
20 members of our team are Jewish and we're out for much of  
21 October, so we asked until November. The Plaintiffs have  
22 until January 21 to file an opposition to the motion to  
23 dismiss. And then we have 30 days, a month, until February  
24 20. And there was some agreement amongst the parties that  
25 we hope Your Honor will bless, with respect to pages. We

1 asked for 40 pages for our opening brief, 40 for the op, and  
2 25 for the reply.

3 THE COURT: Yeah. And I'm fine with that, because  
4 this is more complicated than many of the cases that I have.  
5 So, with respect to a hearing date, I'm not going to set a  
6 hearing date now. I will set the hearing date after the  
7 briefing is completed and the Court has had an opportunity  
8 to read the briefs. We'll make sure we check with -- it'll  
9 be at least several weeks after the reply brief is in, and  
10 I'll make sure my courtroom deputy checks with both of you  
11 to make sure the date is convenient.

12 MR. FINESTONE: Thank you, Your Honor.

13 MR. LAVINBUK: Thank you. Your Honor, just for  
14 full disclosure --

15 THE COURT: Go ahead.

16 MR. LAVINBUK: -- since you had asked about the  
17 motion to dismiss, and I want to give the Court a full  
18 picture of, we think, the defenses in the case. I also want  
19 to note, although likely not, susceptible on a motion to  
20 dismiss, we also believe there are safe harbor defenses here  
21 under 546(e). And I note that in part because I see that  
22 they're also being raised, or safe harbors are being raised  
23 in the customer preference actions. And so, I just want to  
24 let Your Honor know, I think they will be different in this  
25 case. I think there will be elements that are the same, but



1 I think in this case, they're likely to be different,  
2 because the nature of the contract in this case is different  
3 than the one in those cases.

4 THE COURT: Okay. But in any event, I will -- I  
5 won't set a hearing date until all the briefing is completed  
6 and the Court's had an opportunity to review the papers,  
7 maybe not finally, but it'll be at least several weeks after  
8 briefing is completed. Anything else that either of you  
9 wish to raise today?

10 MR. FINESTONE: I'm tempted to respond to the  
11 arguments that were previewed, but I don't think there's any  
12 --

13 THE COURT: Oh, I'll forget about it by the time  
14 we -- you know, by tomorrow. So, you know, you're welcome  
15 to, but it's not going to do you much good.

16 MR. FINESTONE: There's no utility in that. Thank  
17 you very much, Your Honor, and it is, the briefing schedule  
18 was at Docket Number 7 in the adversary briefs.

19 THE COURT: All right. So, the scheduling order  
20 will be entered. I think, you know, Mr. Finestone, you've  
21 been before me before; Mr. Lavinbuk, I'm not sure whether  
22 you have or not. Let me just briefly say, with respect to  
23 any discovery disputes, that I generally don't take  
24 discovery motions, motions to compel. The parties meet and  
25 confer and endeavor to resolve the issue. If you can't, the

1 party seeking the assistance of the Court, contacts my  
2 courtroom deputy, Diana Anderson, and arranges for a  
3 hearing, usually within a day or two, I mean very quick.  
4 And, other than on privilege issues, you know, I really need  
5 briefs. And when I do, I typically ask for just letter  
6 briefs. And I think what I'm able to do is -- it's, you  
7 know, in 17 years, I could count on one hand the number of  
8 discovery briefs I've actually had to hear and resolve.  
9 Because when parties know that it's going to be resolved  
10 immediately and motions to compel are not going to slow  
11 anything down, somehow they manage to find a way to get  
12 things resolved themselves. So, that's what I do.

13 I don't -- let me ask you, additionally, whether  
14 there have been any settlement discussions or discussions  
15 about mediation at this point?

16 MR. FINESTONE: Prior to the commencement of the  
17 adversary proceeding, the parties did have one settlement  
18 conference, Your Honor, and the parties remain, I think,  
19 interested, or of the view that settlement discussions  
20 should continue throughout the pendency of this lawsuit. I  
21 think that's all that I could say about that. Mr. Lavinbuk,  
22 do you agree with how I described it?

23 MR. LAVINBUK: I do. I think from our  
24 perspective, it may well be that we need the Court to  
25 adjudicate a motion to dismiss, to sort of move the parties

1 forward. But certainly, I agree with Mr. Finestone that we  
2 had a cordial first meeting and we're interested in staying  
3 in touch on these topics throughout.

4 THE COURT: Okay. There are a lot of people on  
5 the screen. I don't know whether anybody -- I think -- the  
6 counsel for the parties have spoken. Is there anybody else  
7 who wishes to be heard? All right. So, the scheduling  
8 order will be entered, and we'll proceed from there. Thanks  
9 very much.

10 MR. FINESTONE: Thank you, Your Honor.

11 MR. LAVINBUK: Thank you, Your Honor.

12 THE COURT: And I really am pleased that you were  
13 able to work out the schedule. As I said, it's acceptable  
14 to me. All right, thank you very much, we're adjourned.

15 (Whereupon these proceedings were concluded at  
16 4:13 PM)

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing  
transcript is a true and accurate record of the proceedings.



Sonya Ledanski Hyde

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Date: November 11, 2024